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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/849,251	05/20/2004	Durward I. Faries JR.	1322.0046DIV	7420

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EDELL, SHAPIRO & FINNAN, LLC
1901 RESEARCH BOULEVARD
SUITE 400
ROCKVILLE, MD 20850

EXAMINER

BOCKELMAN, MARK

ART UNIT	PAPER NUMBER
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3766

MAIL DATE	DELIVERY MODE
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08/10/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/849,251

Applicant(s)

FARIES ET AL.

Examiner

Mark W. Bockelman

Art Unit

3766

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 23-40 and 59-64 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 23-26, 29, 34-38 and 59-64 is/are rejected.
- 7) ☒ Claim(s) 27, 28, 30-33, 39 and 40 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>5-20-04, 1-10-05, 12-23-05</u> | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 23-26, 60 are rejected under 35 U.S.C. 102(b) as being anticipated by Augustine et al. USPN 5,807,332.

Augustine teaches, at column 7, lines 28-32 and column 13, line 40 to column 15, line 13, in conjunction with Figs. 20-23, selecting a portion of a fluid line between a fluid source and a patient (column 2, lines 46-48), securing a temperature sensing device to the selected portion of fluid line, measuring the temperature of the fluid flowing through the fluid line, and displaying/recording the measured temperature via a monitor (1410 in Fig. 20, 1620 in Fig. 22, and column 14, lines 16-25, 52-67). The temperature sensing device 1600 of Fig. 22 is slid over the fluid line to locate it at the desired position (column 14, lines 33-39). In another embodiment, the desired portion of fluid line is inserted into a tapered (U-shaped) receptacle 1450 of the temperature sensing device 1400 of Figs. 20-21, and secured by moving a cover 1420 to close the opening (column 13, line 53 to column 14, line 10).

Claims 23, 29 are rejected under 35 U.S.C. 102(b) as being anticipated by Starkey et al. USPN 5,254,094.

Starkey teaches selectively securing a temperature sensor 70 to a desired location along a fluid line, measuring a temperature of fluid flowing through the line, and displaying the measured temperature on a monitor 72 (column 7, lines 28-33, 54-57; column 5, lines 48-59). Fig. 4 shows the temperature sensor 70 secured to a patient's arm between the taped-down portion of the line 43 and the venous entry point 48 into the patient.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 23, 25-26, 29, 50-61 are rejected under 35 U.S.C. 103(a) as being unpatentable over Carter Jr. et al. USPN 5,250,032 in view of Mitchell et al. USPN 5,590,648.

Carter teaches selectively securing a portion of a fluid line 7 extending between a fluid source and a patient, in a temperature sensing device 10 and measuring the temperature of the fluid flowing through the line (column 2, lines 37-40; column 3, lines 55-56; column 4, lines 26-39). The fluid line is secured in the temperature sensing device by inserting the fluid line portion into a tapered (U-shaped) receptacle 42 in the temperature sensing device 40 (Fig. 5), closing the fluid line portion into the device with

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a transparent cap 44, and securing the temperature sensing device to the arm of a patient via a strap 24 (column 4, line 62 to column 5, line 2; column 2, lines 50-53).

Unlike the claimed invention, however, Carter does not disclose electronically displaying, recording and printing the measured temperatures. Mitchell discusses and establishes the desirability of displaying, recording and printing patient data such as measured temperatures, for accurately monitoring and optimizing patient care (column 3, lines 17-24, 45-48; column 5, lines 25-29, 52-57). For at least these reasons, it would have been obvious to display, record and print, as disclosed in Mitchell, the temperatures measured by the device and method disclosed in Carter.

Claims 23, 25-26, 59-61 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ogawa USPN 5,254,094 in view of Mitchell et al. USPN 5,590,648.

Ogawa teaches selectively securing a portion of a fluid line 61 extending from a fluid source to a patient, in a temperature sensing device (Figs. 1,3) and measuring the temperature of the fluid flowing through the line 61 (column 2, lines 9-23). The fluid line 61 is secured in the temperature sensing device by inserting the fluid line portion into a tapered (U-shaped) receptacle 29, closing the fluid line portion 61 into the device with lid 13 hingedly attached to the temperature sensing device 10.

Unlike the claimed invention, however, Ogawa does not disclose electronically displaying, recording and printing the measured temperatures. Mitchell discusses and establishes the desirability of displaying, recording and printing patient data such as measured temperatures, for accurately monitoring and optimizing patient care (column

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3, lines 17-24, 45-48; column 5, lines 25-29, 52-57). For at least these reasons, it would have been obvious to display, record and print, as disclosed in Mitchell, the temperatures measured by the device and method disclosed in Ogawa.

Claims 34, 36-38, 62-64 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barker USPN 4,476,877, or alternatively, Elson et al. USPN 6,248,077, either in view of Mitchell et al. USPN 5,590,648.

Barker teaches securing first and second ends 25, 26 of a fitting 22 to selected portions of a fluid line, 12, 13, inserting a temperature sensor 32 into contact with a receptacle 28 disposed in a connection port 30 on the fitting 22, and indirectly measuring, through the receptacle 28, the temperature of fluid flowing through the fitting 22. The temperature sensing device 10 more specifically includes a securing member 39 having a recess therein, and the temperature sensor 32 is disposed in that recess. The temperature sensor 32 is secured to the connection port 30 by locking the connection port withing the securing member recess via threads 31, 50 to thereby push the temperature sensor 32 into contact with the connection port receptacle 28.

Similarly, Elson teaches securing first and second ends of a flow-through fitting 25 to a fluid line 61, 65, 77, 73 (column 4, lines 8-12, 25-30), inserting a temperature sensor 23, 115 into a connection port 91 on the fitting 25 (Figs. 2, 4), and measuring a temperature of the fluid flowing through the fitting 25 (column 4, lines 19-21, 54-55). More specifically, the connection port 91 of the fitting 25 has a receptacle 95 disposed therein, and the temperature sensing device 23 includes a securing member 113 with

the temperature sensor 115 disposed in a recess 121 within the securing member 113. The temperature sensor 115 is placed into contact with the connection port receptacle 95 by locking the connection port 91 within the securing member recess via resilient arms 107 in conjunction with flexible ears 111 (Figs. 1-3; column 5, lines 20-40), or via resilient arms 117a (Fig. 6; column 5, line 60 to column 6, line 5), to thereby enable the temperature sensor 115 to indirectly measure the fluid temperature through the receptacle 95, 95a.

Barker mentions generating a temperature signal upon measuring the fluid temperature and sending the signal to a computer (column 3, lines 1-4, 17-20). Likewise, Elson mentions coupling the temperature sensor to a computer (column 4, lines 39-41). However, neither reference specifically discloses electronically displaying, recording or printing the measured temperatures. Such functions would be a natural extension of the inventions discussed in Barker and Elson, and could be performed as disclosed in Mitchell. Specifically, Mitchell provides for the recording and printing of patient data, and displaying the data on a monitor (column 3, lines 17-24, 45-48; column 5, lines 25-29, 52-57), for accurately monitoring and optimizing patient care. For at least these reasons, it would have been obvious to display, record and print the fluid temperatures measured according to Barker or Elson, in the manner provided by Mitchell.

Claims 34-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brown USPN 4,138,890 in view of Paine USPN 3,526,134, and further in view of Mitchell et al. USPN 5,590,648.

Brown teaches connecting first and second ends of a fitting 30 to a fluid line, the fitting 30 having a connection port 32 (column 2, lines 54-59) and a temperature probe 1 force fit into the connection port 32 (column 2, lines 40-45, 57-61), and directly contacting and measuring the temperature of the fluid flowing through the fluid line with the temperature probe 1 (column 1, lines 18-23).

However, Brown does not teach electronically displaying the measured temperatures on a display device. Paine teaches an electrically connected temperature sensor 16 which measures the temperature of fluid flowing through the fluid line 10 by directly contacting the fluid. Additionally, Mitchell teaches displaying measured fluid temperatures on a display device based on temperature signals generated by a temperature sensor. It would have been obvious to use an electrically connected temperature sensor in the device disclosed in Brown, and to display the measured temperatures as disclosed in Mitchell, to better monitor a patient's condition.

It is noted that for purposes of each of the rejections above, applicant's priority date for all of the pending claims is October 11, 2001, the filing date of the parent application in which the claimed subject matter is first disclosed.

Allowable Subject Matter

Claims 27-28, 30-33, 39-40 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark W. Bockelman whose telephone number is (571) 272-4941. The examiner can normally be reached on Monday - Friday 10:00 to 6:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela Sykes can be reached on (571) 272 -4955. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MWB

July 25, 2007


MARK BOCKELMAN
PRIMARY EXAMINER